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May 15, 1996

By Hand

William F. Caton  
The Secretary  
Federal Communications Commission  
1919 M Street, N. W., Room 222  
Washington, D. C. 20554

Dear Mr. Caton:

Enclosed please find an original and seven copies of the Joint Comments of Turner Broadcasting System, Inc., News Corporation, Ltd., and C-SPAN on Further Notice of Proposed Rulemaking.

Please date-stamp one copy and return it to me. Thank you for your assistance in this matter.

Sincerely,

  
Michael B. Bressman

Enclosures

FI/53241.1

202/434-7300  
202/434-7400  
753689

**Before the  
FEDERAL COMMUNICATIONS COMMISSION  
Washington, D.C. 20554**

In the Matter of	)	
	)	
Implementation of Sections of the	)	
Cable Television Consumer Protection	)	CS Docket No. 96-60
and Competition Act of 1992:	)	
Rate Regulation	)	
	)	
Leased Commercial Access	)	

**JOINT COMMENTS OF  
TURNER BROADCASTING SYSTEM, INC.,  
NEWS CORPORATION, LTD., AND C-SPAN  
ON FURTHER NOTICE OF PROPOSED RULEMAKING**

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May 15, 1996

## TABLE OF CONTENTS

INTRODUCTION AND SUMMARY .....	2
I. CONGRESS INTENDED TO PROMOTE A DIVERSITY OF PROGRAMMING, NOT JUST A DIVERSITY OF SOURCES, IN THE 1984 CABLE ACT .....	3
II. THE COMMENTERS' DIVERSE PROGRAMMING PROMOTES THE PURPOSES OF THE 1984 CABLE ACT .....	4
III. THE COMMISSION'S PROPOSALS WOULD UNDERMINE PROGRAMMING DIVERSITY AND HARM CABLE SYSTEMS AND INCUMBENT PROGRAMMERS .....	6
CONCLUSION .....	14

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**JOINT COMMENTS OF  
TURNER BROADCASTING SYSTEM, INC.,  
NEWS CORPORATION, LTD., AND C-SPAN  
ON FURTHER NOTICE OF PROPOSED RULEMAKING**

Turner Broadcasting System, Inc. ("TBS"), News Corporation, Ltd. ("Fox"), and C-SPAN (collectively, the "Commenters") hereby file these comments in the above-captioned Further Notice of Proposed Rulemaking ("Further NPRM"), which reconsiders various aspects of the Commission's commercial leased access rules implementing Section 612 of the Communications Act of 1934. The Commenters oppose the proposal set forth in the Further NPRM as its adoption would directly injure them and other programmers who have created the diversity represented in cable's basic tier and CPST

## INTRODUCTION AND SUMMARY

When Congress passed the Cable Communications Policy Act of 1984, its purpose was to promote a diversity of information services as well as a diversity of sources. Consistent with the goal of promoting a diversity of programming, the Commenters offer a variety of programming on their networks. TBS, one of the nation's leading video programmers, currently operates seven national cable networks. In addition to these established services, TBS continues to develop new services aimed at further expanding its already diverse programming. Similarly, Fox presently offers a variety of entertainment and sports programming on its two national services, fX and fXM. C-SPAN also operates two networks, C-SPAN and C-SPAN 2, devoted to public affairs programming. It is through the effort of programmers such as the Commenters that the viewing audience has an extremely broad range of programs from which to choose.

Our concern is that the proposals tentatively adopted by the Commission provide economic subsidies to leased access programmers. Consumers do not purchase CNN, C-SPAN 2, or fX. They purchase the basic and CPST packages of programming. Any proposal that subsidizes entry to a programming tier damages the value of the tier, and reduces the value of the overall product, injuring both cable operators and the programmers like the Commenters remaining on the tier. In fact, the Commission's proposals would lead to a less diverse and lower quality overall product offered to consumers. Because fewer consumers would likely subscribe to this inferior product, cable operators and the remaining non-leased access programmers ("incumbent programmers") would be left to bear the cost of subsidizing leased access programmers. Thus, if the Commission changes the current

method for pricing leased access, it must establish a new method that charges leased access programmers a market rate based on true market conditions, not an artificial, subsidized rate simply to satisfy a leased access quota. Furthermore, it would be bad law and bad policy to mandate that leased access programmers must be accommodated on the basic tier or the CPST.

**I. CONGRESS INTENDED TO PROMOTE A DIVERSITY OF PROGRAMMING, NOT JUST A DIVERSITY OF SOURCES, IN THE 1984 CABLE ACT.**

The leased access provisions of the 1984 Cable Act cannot be interpreted in a vacuum. Congress intended leased access to help promote a diversity of information sources, but leased access was not meant to be an end unto itself that trumps all other purposes of the 1984 Cable Act. Indeed, when Congress enacted these provisions, cable was still in its infancy with limited programming services and options. Leased access must be viewed within the broader goals of the Act to encourage the "growth and development of cable systems" and "assure that cable communications provide the widest possible diversity of information sources and services to the public."<sup>1/</sup> In fact, Section 612 itself requires that the diversification of information sources be done "in a manner consistent with growth and development of cable systems."<sup>2/</sup>

Congress clearly recognized that "[i]f not properly implemented, leased access requirements could adversely impact the economic viability of a cable system, thereby

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<sup>1/</sup> Communications Act of 1934, §§ 601(2), (4), codified at, 47 U.S.C. § 522 (emphasis added).

<sup>2/</sup> Communications Act of 1934, § 612(a), codified at 47 U.S.C. § 532(a).

hurting the public."<sup>3/</sup> When addressing specific prices and terms for leased access,

Congress was even more explicit that leased access should not harm cable systems:

[I]n establishing price, terms and conditions pursuant to this section, it is appropriate for a cable operator to look to the nature . . . of the service being proposal [sic], how it will affect the marketing mix of existing services being offered by the cable operator to subscribers, as well as potential market fragmentation that might be created and any resulting impact that might have on subscriber or advertising revenues.<sup>4/</sup>

Thus, any Commission proposal to modify the prices and terms of leased access must be done so in a manner that will not injure the public, the cable system (including non-leased access programmers), or cable operators. As explained below and in greater detail in the report of Stanley M. Besen and E. Jane Murdoch attached to this filing,<sup>5/</sup> the Commission's current proposals would frustrate the full purposes of the 1984 Cable Act by resulting in such harm. The Commission's proposals therefore should be changed.

## **II. THE COMMENTERS' DIVERSE PROGRAMMING PROMOTES THE PURPOSES OF THE 1984 CABLE ACT.**

TBS has been and continues to be one of the leading programming innovators in the nation. Presently, TBS offers a mix of diverse news, entertainment, and sports programming 24 hours per day on its seven national networks -- WTBS, Cable News Network, Headline

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<sup>3/</sup> Report of the Comm. on Energy and Commerce on the Cable Franchise Policy and Communications Act of 1984, at 50 (Aug. 1, 1984) ("1984 House Report").

<sup>4/</sup> *Id.* at 51: see Communication Act of 1934, § 612(c)(1), codified at 47 U.S.C. § 532(c)(1) (Cable operator shall set price, terms, and conditions to assure that leased access "will not adversely affect the operation, financial condition, or market development of the cable system").

<sup>5/</sup> Stanley M. Besen and E. Jane Murdoch, "The Impact of the FCC's Leased Access Proposal on Cable Television Program Services," May 15, 1996 ("Besen and Murdoch"), attached as Ex. 1.

News, Turner Network Television, the Cartoon Network, Turner Classic Movies, and Cable News Network International/CNN Financial News Network ("CNNI/CNN $\dot{f}n$ "). As of April 1996, millions of cable households received TBS's programming services, ranging from 62.8 million for WTBS to 2.3 million for CNNI/CNN $\dot{f}n$ . Clearly TBS's high quality, award-winning networks and programming have served the interests and needs of millions of consumers throughout the nation. TBS does not intend to maintain the *status quo*; it intends to develop even more diversity of services and programming. For example, TBS recently announced that it will launch CNNSI, a 24-hour per day network of sports news and information developed with *Sports Illustrated*, in December 1996.

Fox also adds to the diversity of programming offered by cable systems. Within the last two years, it began offering two cable programming networks, fX and fXM: Movies from Fox. fX, offered 24 hours per day, is a general entertainment and sports network, featuring original cable programs, popular syndicated television series, sports events, and movies. fX currently reaches more than 27 million cable households. fXM, Hollywood's first movie network, was launched in October 1994, and is currently available in approximately 4 million cable homes. fXM operates 24 hours per day commercial-free, delivering movies from Twentieth Century Fox's extensive movie library. Fox has also announced that it will produce a 24-hour per day news channel beginning by the end of 1996.

C-SPAN's high quality programming has become a mainstay of cable. C-SPAN is a non-stock, non-profit organization created by the cable television industry offering two full-time public affairs programming services, C-SPAN and C-SPAN 2. C-SPAN, launched in



1979, currently reaches more than 67 million cable households, and, C-SPAN 2, which began service in 1986, reaches more than 44 million households. Neither programming service receives revenues from advertising.

It is this type of diverse programming that fosters the goals of the 1984 and 1992 Cable Acts. Moreover, because cable programming currently available to consumers is far more diverse than it was in 1984 or even 1992, the Commission should be especially careful not to propose any new regulations that would undermine that diversity or jeopardize the quality of the cable market product simply to guarantee a few leased access programmers a place on a cable tier.

### **III. THE COMMISSION'S PROPOSALS WOULD UNDERMINE PROGRAMMING DIVERSITY AND HARM CABLE SYSTEMS AND INCUMBENT PROGRAMMERS.**

Unfortunately, the Commission's new proposals would likely have a detrimental impact on the diversity of cable programming and the viability of the cable marketplace by unintentionally skewing market forces to advantage leased access programmers above the interests of cable operators, incumbent programmers, and the public. The Commission's proposals would allow leased access programmers to free ride on the efforts of cable operators and programmers who have spent many years creating a valuable product, while diminishing the value of that same product. Such unjustifiable results should neither be mandated nor encouraged by the Commission, and are not required by law.

Consumers do not buy just CNN, fXM, or C-SPAN; instead, they buy the basic tier or CPST so that they can have a mix of high quality programs available to them. Thus being located on a tier of high quality programs is advantageous for a programmer because its

programming would be received by a larger number of consumers. For example, a consumer who wants to purchase a package of attractive, diverse programs would get TBS programming as part of the product. In addition, programmers on tiers such as the Commenters also benefit from the "spillover" effect: that is, if a consumer wishes to purchase a certain type of programming, say sports, then locating CNN on a tier with sports programming increases the likelihood that the subscriber will watch CNN.

For the vast majority of program services, the number of subscribers receiving the program directly impacts the program's revenues. Most program services, including all of the Commenters' programming (except for WTBS), are subscriber-supported, receiving a license fee for each subscriber. If fewer subscribers receive CNN, for example, then CNN will collect fewer subscriber license fees. Moreover, a number of services, including all of TBS's (except TCM) and fX, derive significant revenues from advertisers. A program service's advertising rates depend on the number of subscribers receiving the program. So if CNN has fewer viewers, then advertisers will insist on lower rates, resulting in lower revenues for CNN. If the Commenters' programming either were removed from a tier or were located on a tier viewed by fewer consumers, then their revenues would significantly decrease, and the quality of their programming would suffer.

Cable operators use their editorial discretion to package and market a mix of programming services valued by a wide range of consumers to attract subscribers and increase revenues. Because leased access channels are less highly valued by subscribers and advertisers, cable operators are unwilling to pay per-subscriber license fees for them or include them in the tier package. To compensate cable operators for providing access to

these less valued programmers, the Commission's regulations permit cable operators to charge leased access programmers the highest implicit fee -- the highest market value that an operator would otherwise receive for that channel. Although this formula likely resulted in too low a fee,<sup>6/</sup> few programmers actually utilized leased access.

To increase the use of leased access, the Commission has proposed two fundamental changes. First, it proposes to eliminate the highest implicit fee as the ceiling on the leased access fee and replace it with a "cost/market rate formula" based on the "opportunity cost" to the cable operator of the existing services displaced by leased access programmers. The Commission's proposal would result in leased access fees at or near zero, unquestionably "understating the true opportunity cost of displaced services."<sup>7/</sup> Numerous programmers therefore would have access at artificially low rates to the cable operator's limited channel capacity. Second, the Commission intends to require that leased access programmers be placed on a basic tier, displacing subscriber-supported services. As Besen and Murdoch demonstrate, these proposals would adversely affect the mix and/or quality of the product offered by cable operators, leading to less diversity of programming, fewer subscribers, and lower revenues for programmers.

By setting the leased access fee at a subsidized rate,<sup>8/</sup> a leased access programmer who would not otherwise gain access will now be able to easily purchase a channel for its

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<sup>6/</sup> See Besen and Murdoch at 14.

<sup>7/</sup> Id. at 15.

<sup>8/</sup> If a cable operator could receive more revenues from the presence of the subscriber-supported program, then the lost revenues must be viewed as subsidizing the leased access programmer.

programming on the cable operator's system. Because there is limited channel capacity on cable systems, a leased access programmer inevitably must displace either a current programmer or programming in the development stage.

According to Besen and Murdoch, it is highly likely that this displacement will lead to less diversity of programming.<sup>9/</sup> Leased access programmers by definition must pay cable operators fees, unlike a subscriber-supported program that receives license fees from cable operators. Thus, any channel relying on license fees would be unable to pay the required leased access charges. Only those programs that receive revenues exclusively from merchandise sales or advertising, such as home shopping networks and infomercials, could afford leased access and likely would quickly fill the available leased access channels, denying access to programming more valued by consumers and advertisers.<sup>10/</sup> Because the cable operator would not be permitted to control the mix of programs, the result would be less diverse programming -- home shopping networks and infomercials -- from more diverse sources.<sup>11/</sup>

This loss of diversity of programming directly conflicts with the express purpose of the 1984 Cable Act to develop a diversity of programming as well as a diversity of programming sources.<sup>12/</sup> Clearly Congress did not intend or believe it to be in the public interest (or a cable operator's interest) to create cable systems saturated with home shopping

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<sup>9/</sup> See Besen and Murdoch at 16-17.

<sup>10/</sup> See id. at 17.

<sup>11/</sup> See id.

<sup>12/</sup> See Communications Act of 1934, § 601(4), codified at 47 U.S.C. § 521(4).

networks and infomercials simply to guarantee source diversity. Moreover, Congress required that the diversity of information sources "envisioned by this scheme is to be brought about in a manner which is not inconsistent with the growth and development of cable systems."<sup>13/</sup> The Commission's proposal will stifle growth and development.

The Commission's proposal to require placement of leased access programs on basic tiers also is inconsistent with congressional intent. As the Commission acknowledges, Congress did not require specific tier or channel placement for leased access as it did with PEG channels.<sup>14/</sup> It previously had noted that Congress did not include leased commercial access channels as part of its basic tier definition.<sup>15/</sup> Recognizing that Congress intended to balance the needs of cable operators to market their programming with the needs of leased access programmers, the Commission rejected any attempt to dictate where leased access channels must be placed.

The Commission should continue to allow cable operators to decide where to locate leased access channels based on market conditions. Cable operators understand that subscribers purchase packages, not programming services. They therefore need the freedom to develop and market a diverse package of high quality programming to attract consumers. Forcing cable operators to place leased access programs on their valuable basic tiers reduces the diversity of programming on the tier and the appeal of the product.

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<sup>13/</sup> 1984 House Report at 48.

<sup>14/</sup> See Further Notice at ¶ 116.

<sup>15/</sup> See In the Matter of Implementation of Sections of the Cable Television Consumer Protection and Competition Act of 1992, Rate Regulation, 8 FCC Rcd 5631, 5939, at ¶ 498 (1993).

Replacing subscriber-supported program services with less valued leased access home shopping networks and infomercials will restrict a cable operator's ability to attract new subscribers and likely will lead to defections of current subscribers, reducing revenues for cable operators and programmers and hindering, or worse damaging, "the growth and development of cable systems." Rewarding leased access programmers with extremely valuable placement on basic tiers would add insult to injury. As explained earlier, a programmer benefits from being clustered with other highly valued programs. If leased access programming services are located on a basic tier, they would free ride on the efforts of subscriber-supported incumbent programming services. would receive unearned "spillover" benefits, and would provide few, if any, positive "spillovers." Besen and Murdoch provide an appropriate analogy:

Suppose, for example, that a mall catering to apparel shoppers is forced to displace some stores and accept in their place new stores that sell lawn and gardening equipment. These new stores would not attract customers with the same demographic characteristics as those that frequent the incumbent stores. As a result, the shoppers attracted to the mall by the new stores would be less likely to shop at the incumbent stores than were the shoppers that had patronized the displaced stores, thus causing a decline in the volume of business transacted by the incumbent stores.<sup>16/</sup>

Worse yet, if these weaker leased access programming services move into the "neighborhood" and replace more highly valued subscriber-supported programming services, fewer consumers will want to subscribe to this less attractive tier, resulting in lower license

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<sup>16/</sup> Besen and Murdoch at 18.

fee revenues for incumbent programmers.<sup>17/</sup> Besen and Murdoch provide another useful example that demonstrates what the effect would be on the Commenters:

[I]t may also be the case that some shoppers at the mall actively dislike some of the new stores' products (chemical pesticides, for example), and elect to abandon the mall altogether in favor of a different shopping venue. That is, the spillover effect from the new tenants may be not only less positive, but even negative. In the cable context, not only will incumbent services realize diminished positive spillovers from the leased access services, but they may even feel a negative impact as subscriptions are canceled by people who find the "clutter" of home-shopping and infomercial services distasteful and annoying.<sup>18/</sup>

With fewer subscribers to the tier, programmers will have to reduce their rates to attract advertisers to their less valuable product. If the Commission permitted an operator to provide leased access channels a la carte or group them in their own tier, the operator would still be able to present a diverse albeit smaller package possibly limiting the revenue losses to operators and programmers from leased access.

The current video programming distribution environment further exacerbates the likelihood of subscriber losses and reduced revenues. When the 1984 Cable Act and even the 1992 amendments were passed, cable faced limited distribution competition. Since that time, however, there has been a significant expansion of distribution outlets, particularly through DBS. With the expanding popularity of DBS, any Commission regulation that decreases the value of cable's product increases the likelihood of subscriber defections, risking the financial stability of cable systems. This potential loss is especially troublesome

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<sup>17/</sup> See Besen and Murdoch at 17-20. As the incumbent programmers' revenues decline, they will have less resources and incentives to produce new programming. This will limit the future development of more diverse programming.

<sup>18/</sup> *Id.* at 19-20.

because DBS is not hindered by the same channel capacity restrictions or by the leased access requirements.<sup>19/</sup> Endangering the financial condition of cable systems clearly is contrary to Congress's intent.<sup>20/</sup>

Although the Commission concedes that Congress did not intend "that cable operators subsidize programmers who seek access to their system through the provisions of Section 612,"<sup>21/</sup> the revenues lost by both cable operators and incumbent programmers amount to a subsidy.<sup>22/</sup> In other words, the difference between the revenues that would have been earned if the subscriber-supported programs remained and those earned with the leased access programming is a subsidy paid by operators and incumbent programmers to support the leased access programmers.<sup>23/</sup> Placing leased access programmers on tiers amounts to an even greater subsidy because they will receive the "spillover" benefits from the more valued incumbent programmers who continue to attract the remaining subscribers. Simply put, the Commission's proposals amount to a transfer of wealth from cable operators and subscriber-supported programmers to leased access programmers. In the process, cable operators, incumbent programmers, and the public are harmed. And there is nothing in the

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<sup>19/</sup> Not all cable programming services are available on DBS.

<sup>20/</sup> See 1984 House Report at 50-51; Communications Act of 1934, § 612(c)(1), codified at 47 U.S.C. § 532(c)(1).

<sup>21/</sup> Further NPRM at para. 27.

<sup>22/</sup> See Besen and Murdoch at 20.

<sup>23/</sup> Although the cable operator will receive at least a small amount of compensation in the form of a leased access payment, neither incumbent nor displaced programmers receive reimbursement for their lost revenues.



Commission's proposal that offsets the harm to programmers like TBS inflicted by the proposed new regime.<sup>24/</sup>

## CONCLUSION

The Commission's new proposals would subsidize leased access programmers at the expense of the Commenters and others and wreak havoc on cable systems at a time when these systems face their stiffest competition. The proposals also will lead to less diverse programming available to the public and lost revenues for cable operators and subscriber-supported programmers, contrary to both the public interest and Congress's intent. If the Commission believes it must change its leased access regulations, it should implement new rules that set the fee for leased access so that it fully compensates cable operators, and does not permit leased access programmers to free ride on the tiers that operators and advertising-supported programmers have built. Hence, the Commission should not require cable operators to locate leased access channels on basic tiers because doing so will unjustifiably reward and subsidize leased access programmers while injuring incumbent programmers.

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<sup>24/</sup> Although Section 612 was designed to provide opportunities for non-affiliated programmers to have access to cable systems, other statutory provisions have the same effect, most notably, 47 U.S.C. § 533(f)(1)(B) and its limiting regulations, which limits the number of channels on a cable system that can be occupied by a video programmer in which the operator has an attributable interest. Similarly, the retransmission consent provisions of the 1992 Cable Act, 47 U.S.C. § 325, have led to the carriage of unaffiliated program services. Hence, the modest utilization of the leased access provisions might mean nothing more than they are surplusage -- or an unjustifiable incremental interference in the marketplace of speech.

Respectfully submitted,

A handwritten signature in cursive script, reading "Bruce D. Sokler", written in dark ink on a white background.

Bruce D. Sokler

Michael B. Bressman

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Washington, D.C. 20004

202/434-7300

Their Attorneys

May 15, 1996

F1/53005.2

CERTIFICATE OF SERVICE

I hereby certify that I have this 15th day of May, 1996, caused a true and correct copy of the foregoing Joint Comments of Turner Broadcasting System, Inc., News Corporation, Ltd., and C-SPAN on Further Notice of Proposed Rulemaking to be served by hand on the persons listed below:

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Federal Communications Commission  
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Honorable Susan Ness  
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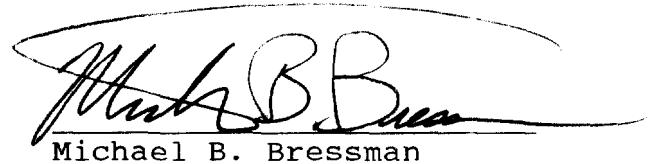
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Michael B. Bressman



**THE IMPACT OF THE FCC'S LEASED ACCESS PROPOSAL ON CABLE  
TELEVISION PROGRAM SERVICES**

STANLEY M. BESEN  
and  
E. JANE MURDOCH

CHARLES RIVER ASSOCIATES

May 15, 1996

## 1. Introduction

The Federal Communications Commission has recently proposed major changes in the way in which it regulates mandatory leased access to cable television systems.<sup>1</sup> In particular, the Commission proposes to abandon its policy of constraining leased access rates to be no more than the maximum implicit access fee a cable system currently charges the program services it carries. In its place, the Commission proposes an arrangement whereby leased access charges would be based on its estimate of the "opportunity cost" to the cable operator of displacing services to make room for leased access programmers. The Commission also proposes to require cable operators to place the leased access services on basic service tiers if they so desire.<sup>2</sup>

This paper identifies the pitfalls of the Commission's new proposal, primarily from the standpoint of incumbent and new program services. Because these dangers result from the handicaps imposed on cable operators, however, the paper begins with a discussion of the relationship between an operator and program services. It describes in general terms the problems that arise when regulators interfere with a cable operator's ability to coordinate the programming

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<sup>1</sup> Federal Communications Commission, Order on Reconsideration of the First Report and Order and Further Notice of Proposed Rulemaking In the Matter of Implementation of Sections of the Cable Television and Consumer Protection and Competition Act of 1992: Rate Regulation, Leased Commercial Access, MM Docket No. 92-266, CS Docket No: 96-60, Adopted: March 21, 1996, Released: March 29, 1996; henceforth cited as Order.

<sup>2</sup> For an elaboration of the Commission's earlier decision and its current proposal, see our paper, "An Economic Analysis of the FCC's Cable Leased Access Proposal," attached to Comments of Telecommunications, Inc. and Request for Further Reconsideration in the current proceeding.

on its tiers, and to enforce program quality and promotional standards among program services. Such regulatory interference hurts not only the cable operator but also incumbent and new program services.

There are two ways in which program services will be harmed by the implementation of the Commission's proposal. First, the new approach biases the choice of cable programming away from services that rely indirectly on subscriber payments and toward services that rely on merchandise sales, infomercials, and voluntary viewer contributions. Program services that rely significantly on subscriber fees will be displaced by leased access programming services even though subscribers and advertisers value these latter services less.

Second, the displacement of valuable programming on basic service tiers, coupled with the inability of the operator to engage in coordination and monitoring cable programming on the leased channels, will harm those incumbent program services that continue to be carried. That is, even the basic cable program services that are not displaced by leased access programmers will be hurt because the other programming on their tiers will be weakened; subscribers and advertisers will find that cable is a less attractive product.

The Commission's current proposal for pricing leased access expresses an intention to compensate operators for any economic harm they may suffer when they are forced to accommodate access programmers. However, the



Commission overlooks the need to compensate programmers, advertisers, and subscribers for the economic harm they will suffer when cable becomes a less attractive product. These harms are the result of a subsidy to leased access services that could not survive on their merits alone.

## **2. The Economics of the Relationship Between Cable Operators and Program Services**

This section discusses the business arrangements that have evolved between cable system operators and program services to support the development of a cable product that is attractive to viewers and advertisers. An important element of this organizational structure is the central role played by system operators in assembling and packaging an attractive program mix. In addition, operators and program services have established working relationships that specify the program development and promotional efforts each will undertake. An understanding of these business relationships is essential to discern the shortcomings of leased access, discussed in the subsequent section.

### ***a. The Coordination of Programming on Service Tiers***

Cable systems offer subscribers a number of diverse services together on a tier rather than providing the services à la carte because doing so increases the value of the cable television product. Although customers may initially subscribe to gain access to only a subset of program services, tiering creates an opportunity for lesser known services to introduce their programming to